



Ninety-Ninth Legislature - First Session - 2005
Revised Committee Statement
LB 116

Hearing Date: March 3, 2005

Committee On: Judiciary

Introducer(s): (Friend, Cornett)

Title: Provide a penalty for certain actions relating to child support withholding

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

7	Yes	Senators Aguilar, Bourne, Combs, Flood, Foley, Friend, Pedersen
	No	
	Present, not voting	
1	Absent	Senator Chambers

Proponents:

Senator Mike Friend
Michelle Pitman

Representing:

Introducer
Self

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 116 would authorize a court to sanction an employer for failing to withhold or remit income of an employee obligated to pay child support if the employer has received notice of its duty to do so. The sanction which a court may impose on an employer for failure to withhold or remit child support payments is \$25 per day, with a maximum fine of five hundred dollars per incident.

Explanation of amendments, if any:

The committee amendment to LB 116 incorporates the following bills as amended by the committee: LB 444, LB 322, and LB 62.

LB 116

LB 116 is not amended by the committee amendment. The bill as introduced authorizes a court to sanction an employer for failing to remit child support payments after receiving notice of its obligation to do so.

LB 444

Legislative Bill 444 provides that the State Disbursement Unit (SDU) shall notify the Title IV-D Division (HHS) that a child support payment made by an obligor resulted in a returned check or returned debit transaction. The Title IV-D Division will adjust the statewide automated data processing and retrieval system to ensure that the obligor no longer receives credit for that payment.

The bill also allows the SDU to collect a fee equal to the actual cost of processing a returned check or returned debit transaction. The SDU may issue a notice to the originator stating that all future payments shall be paid by cash, money order, cashier's check, or certified check. If a notice is issued, future payments shall be by cash, money order, cashier's check, or certified check except pursuant to rules and regulation and at least two years after such issuance of notice, the unit may waive the required payment method for good cause shown.

COMMITTEE AMENDMENT

The committee amendment to LB 444 strikes section one of the bill and eliminates the \$936, 000 fiscal note. In Section 2, the amendment reinstates current law pertaining to insufficient payments. It also clarifies the terms "insufficient funds" to mean "payments resulting in returned check charges or charges for electronic payments not accepted" and inserts "money order, cashier's check, or certified check" in place of "cash, guaranteed funds, or wire funds transfer in 43-3342.03.

LB 322

Legislative Bill 322 provides domestic violence considerations when determining child custody, visitation and modifications.

The bill defines batterer's intervention program, joint legal custody, and joint physical custody. The bill would mandate the court to determine both legal and physical custody of the child as separate and independent issues. It also adds sex offenses or crimes that require registry under the Sex Offender Registration Act as factors when determining custody and visitation in the best interest of the minor child. Legislative Bill 322 provides for address confidentiality pursuant to the Address Confidentiality Act for the child and non-abusive parent.

Legislative Bill 322 provides for a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not abusive. The presumption can be overcome by clear and convincing evidence that the child should have custody and visitation with the abusive parent. If the court finds that both of the parents are abusive, the court shall determine the predominant aggressor and the presumption shall apply against the predominant aggressor.

The court shall consider additional factors in determining if the presumption has been rebutted to include whether the abusive parent has committed any further abusive acts; whether the abusive parent is on probation, parole or subject to a protection order; and whether the abusive parent has completed a batterer's intervention program.

Visitation shall only be awarded to an abusive parent if adequate provisions can be made for the safety of the child and the non-abusive parent. The court may consider numerous factors in granting visitation including an order to exchange the child in a protected setting, supervised visitation, a batterer intervention program for the abusive parent, requiring the abusive parent to abstain from alcohol/drugs during visitation, prohibiting overnight visitation, and requiring a bond from the abusive parent for the safe return of the child.

In modification proceedings, if there is a finding that a parent has become an abusive parent since the last custody or visitation determination, the court can consider that a material change of circumstances and modify the court order.

COMMITTEE AMENDMENT

The committee amendment to LB 322 replaces the green copy of the bill and makes the following changes:

- Strikes language on Page 10, lines 13-21 pertaining to joint legal or joint physical custody being ordered when the parents agree to the arrangement and the custody arrangement serves the best interest of the child.
- Provides that the court shall consider evidence of domestic abuse when determining the best interest of a minor child for custody and visitation by a preponderance of evidence standard;
- Strikes language pertaining to the rebuttable presumption that an abusive parent shall not be granted any form of custody;
- Allows the court to make a finding on the record that a person has been established an abusive parent by clear and convincing evidence;
- Clarifies domestic abuse definition from 'domestic abuse includes' to 'domestic abuse means';
- Removes language on Page 8, line 27, 'except when a finding of an abusive parent is made by the court under section 4 of this act';
- Strikes 'After a hearing in open court, the court may place the custody of a minor child with both parents on a shared or joint custody basis';
- Provides that an agency-substantiated designation of child abuse in the HHS central registry or tracking system shall not be used as evidence of domestic abuse in a custody or visitation proceeding;

- Adds ‘custody’ to Section 5 so that a court may award custody or visitation to an abusive parent if adequate provision can be made for the safety of the child and the non-abusive parent;
- Clarifies that an abusive parent cannot consume alcohol or controlled substances while the child is in the physical custody of such parent; and
- Makes internal references and renumbers accordingly.

LB 62

Under current law, physicians, nurses and hospitals are entitled to assert a lien for the cost of medical service provided to a patient who recovers from or settles with the third party wrongdoer for the patient’s treated injury.

Legislative Bill 62 would provide that chiropractors with the authority to assert a medical lien as doctors and nurses are permitted to assert.

There is an emergency clause in the bill.

Senator Patrick J. Bourne, Chairperson